

# **EXHIBIT D**

1 ANNETTE L. HURST (State Bar No. 148738)  
2 DANIEL N. KASSABIAN (State Bar No. 215249)  
3 ELENA M. DIMUZIO (State Bar No. 239953)  
4 HELLER EHRMAN LLP  
5 333 Bush Street  
6 San Francisco, California 94104-2878  
7 Telephone: +1.415.772.6000  
8 Facsimile: +1.415.772.6268  
9 E-mail: Annette.Hurst@HellerEhrman.com  
10 Daniel.Kassabian@HellerEhrman.com  
11 Elena.DiMuzio@HellerEhrman.com

12 Attorneys for Plaintiffs  
13 CANTER & ASSOCIATES, LLC and  
14 LAUREATE EDUCATION, INC.

15 CHRISTINE LEPERA (admitted *pro hac vice*)  
16 GAYLE M. ATHANACIO (State Bar No. 130068)  
17 SONNENSCHN NATH & ROSENTHAL LLP  
18 525 Market Street, 26th Floor  
19 San Francisco, California 94105-2708  
20 Telephone: +1.415.882.5000  
21 Facsimile: +1.415.882.0300  
22 E-mail: CLepera@Sonnenschein.com  
23 GAtanacio@Sonnenschein.com

24 Attorneys for Defendant  
25 TEACHSCAPE, INC.

26 UNITED STATES DISTRICT COURT  
27 NORTHERN DISTRICT OF CALIFORNIA  
28 SAN JOSE DIVISION

29 CANTER & ASSOCIATES, LLC and  
30 LAUREATE EDUCATION, INC.,

31 Plaintiffs,

32 v.

33 TEACHSCAPE, INC.,

34 Defendant.

Case No. C 07-3225 RS

**JOINT CASE MANAGEMENT  
STATEMENT**

Judge: The Honorable Richard Seeborg  
Ctm.: 4 (5th floor)  
Date: December 19, 2007  
Time: 2:30 p.m.

1 Pursuant to Federal Rule of Civil Procedure 26(f), Civil Local Rule 16-9, the  
2 Standing Order for All Judges of the Northern District of California, the Order Setting  
3 Initial Case Management Conference and ADR Deadlines ("Initial Case Management  
4 Order") entered on June 19, 2007, and the Clerk's Notices entered on September 20 and  
5 October 30, 2007, the parties to the above-captioned action submit this Joint Case  
6 Management Statement and request that the Court enter an order in accord herewith.

7 **I. JURISDICTION AND SERVICE**

8 **A. Subject Matter Jurisdiction**

9 Plaintiffs Canter & Associates, LLC ("Canter") and Laureate Education, Inc.  
10 ("Laureate") (collectively, "Plaintiffs") assert that the Court has federal question subject  
11 matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338, because  
12 Plaintiffs assert claims for false or misleading advertising under the Lanham Act and  
13 copyright infringement under the Copyright Act. Plaintiffs further assert that the Court has  
14 supplemental jurisdiction over the related state law claims in this action pursuant to 28  
15 U.S.C. § 1367, because they form part of the same case or controversy as the claims for  
16 violations of federal laws.

17 Defendant Teachscape, Inc. ("Teachscape" or "Defendant") has moved to dismiss  
18 Plaintiffs' complaint, including both Canter's claim under the Lanham Act and Laureate's  
19 claim under the Copyright Act for failure to state a claim, and thus asserts that subject  
20 matter jurisdiction is lacking. As of the date of this statement, Teachscape's motion to  
21 dismiss is under submission before the Court.

22 **B. Venue**

23 The parties agree that venue is proper pursuant to 28 U.S.C. § 1391(b), because the  
24 Northern District of California is a judicial district in which a substantial part of the events  
25 at issue in this action occurred, and because Teachscape has its principal place of business  
26 in this judicial district.

27 **C. Personal Jurisdiction and Service**

28 Teachscape does not object to personal jurisdiction over it and does not object to the

1 method of service of the Summons and Complaint in this action.

2 **D. Miscellaneous**

3 This case is not a class action and there are no related cases or proceedings as  
4 defined in Civil Local Rule 3-12. The parties do not believe that this case is suitable for  
5 binding arbitration, a special master, or reference to the Judicial Panel on Multidistrict  
6 Litigation.

7 **II. DESCRIPTION OF THE CASE**

8 **A. Plaintiffs' Factual Allegations**

9 Canter, a wholly-owned subsidiary of Laureate, provides distance-delivered master's  
10 degree programs—e.g., Master in the Art of Teaching, Master in Education, and Master of  
11 Science in Education—and graduate courses in the field of education for teachers through  
12 partnerships with accredited universities, including Marygrove College (“Marygrove”).  
13 Plaintiffs allege that starting April 2004, a group of twelve employees left Canter and  
14 subsequently worked for Teachscape. These former employees had held various positions  
15 at Canter, from executive management to product development, and Plaintiffs assert they  
16 were instrumental in, among other things: (1) performing the market research summarized  
17 in Canter's highly confidential business plans and proposals; (2) cultivating relationships  
18 and negotiating confidential contractual terms with university partners like Marygrove;  
19 (4) marketing Canter's offerings to university partners and to potential students; and  
20 (5) developing the course materials for the graduate courses and master's degree programs  
21 offered by Canter.

22 After these former employees began to work for Teachscape, it started to offer  
23 distance-delivered master's degrees and graduate course programs in education. Plaintiffs  
24 claim that despite having no previous expertise in this field, Teachscape targeted Canter's  
25 most profitable accounts. Plaintiffs further assert that Teachscape also made use of Canter's  
26 most effective means of marketing these courses. Plaintiffs contend that both the client  
27 profitability and marketing means information is confidential and unknown to the public,  
28 but was known to the former Canter employees. With respect to one partner in particular,

Heller  
Ehrman LLP

1 Marygrove, Canter asserts that at least one master's degree program that was to be offered  
2 by Teachscope was advertised in a misleading way so as to cause confusion with Canter's  
3 offering of the same degree program. Furthermore, Plaintiffs allege that Teachscope  
4 improperly interfered with Canter's contractual relationship with Marygrove. Based on  
5 these and other facts alleged, Plaintiffs have asserted that Teachscope's actions in entering  
6 the market for distance-delivered master's degree programs and graduate courses in the  
7 field of education was by unlawful means and has harmed Plaintiffs.

8 **B. Defendant's Factual Allegations**

9 Because Teachscope has moved to dismiss this action, it has not yet responded to the  
10 facts alleged in the Complaint by Plaintiffs. However, Teachscope unequivocally denies  
11 that it has engaged in any wrongdoing whatsoever and believes that Plaintiffs' present  
12 action is without merit and represents Plaintiffs' attempt to thwart legitimate competition  
13 and the rights of individuals to pursue employment of their choosing. Teachscope asserts  
14 that it was only years after Plaintiffs' former employees left Plaintiffs' employ that it  
15 entered into a relationship with Marygrove College ("Marygrove"). Teachscope further  
16 asserts that prior to 2004, when Plaintiffs' first "former employee" allegedly came to work  
17 for Teachscope, Teachscope had already partnered with numerous university and colleges to  
18 develop and deliver teacher education programs, including programs that awarded teachers  
19 specific credentials. Hence, Teachscope contends its partnering with colleges and  
20 universities in connection with their master's degree programs was a natural and legitimate  
21 extension of Teachscope's prior business.

22 Teachscope further alleges that Plaintiffs have publicly announced their intention to  
23 abandon all university partners for online degree programs, except for Plaintiffs' wholly  
24 owned university. Teachscope further alleges that Plaintiffs have conceded they have no  
25 evidence of any substantial similarity between their copyrighted works and any works of  
26 Teachscope—a fundamental element of any copyright claim—and further alleges that the  
27 allegedly misleading advertisements only stated that Marygrove's degree program was  
28 "updated".

Heller  
Ehrman LLP

1           **C.    Legal Issues**

2           Canter has asserted claims against Teachscape for misappropriation of Canter's trade  
3 secrets under California law, intentional interference with contract and prospective  
4 economic relationships under California law, and for false and misleading advertising under  
5 California and federal laws. Laureate has asserted a claim against Teachscape for copyright  
6 infringement based upon Teachscape's alleged copying and use of Laureate's copyrighted  
7 course materials. Plaintiffs have also asserted a claim against Teachscape for unfair  
8 competition under California law.

9           Teachscape has not answered these claims, and instead has moved to dismiss all of  
10 them for failure to state a claim pursuant to Federal Rule of Civil Procedure 12(b)(6). That  
11 motion is pending before the Court. Teachscape asserts that none of Plaintiffs' claims have  
12 any factual or legal basis.

13           **D.    Relief Sought**

14           Plaintiffs seek injunctive relief prohibiting Teachscape from using Canter's trade  
15 secrets, from wrongfully interfering with Canter's business relations with its university  
16 partners, and from infringing Laureate's copyrights. In addition, Plaintiffs seek damages  
17 and restitution from Teachscape of their actual damages / lost profits, and Teachscape's  
18 ill-gotten gains / profits resulting from Teachscape's unlawful actions. Plaintiffs also seek  
19 exemplary and punitive damages, attorneys' fees and costs associated with this action.

20           Teachscape asserts that Plaintiffs are entitled to no affirmative relief whatsoever. To  
21 the contrary, Teachscape asserts Plaintiffs are liable to Teachscape for the attorneys' fees it  
22 incurred in connection with Plaintiffs' copyright claim.

23           **E.    Narrowing of Issues**

24           At present, unfortunately, the parties do not foresee any narrowing of issues absent  
25 further assistance from the Court. The parties have set forth separate proposals regarding  
26 the issue of Plaintiffs' copyright infringement claim, which are set forth below.

27           **1.    Plaintiffs' position**

28           Since the Court's hearing on Teachscape's motion to dismiss, Plaintiffs proposed

1 that Teachscope produce the earliest available draft and final version—i.e., latest version, or  
2 published version if publication has occurred—of the course materials for the specialized  
3 Teachscope master's degree programs—e.g., Curriculum, Instruction & Assessment  
4 (“CIA”); Reading & Literacy, Grades K–6; and Mathematics, Grades K–5 and Grades 6–  
5 8—that are currently offered through Marygrove or were advertised by Teachscope as a  
6 master's degree program to be offered through Marygrove. Teachscope refused this offer.

## 7                   2.     **Teachscope's position**

8           Prior to the Plaintiffs' filing of their complaint, Teachscope offered to engage in a  
9 mutual “apples to apples” exchange of Marygrove final course materials in an effort to  
10 assuage Plaintiffs' concerns and avoid litigation. Plaintiffs rejected this offer and filed the  
11 present action. Subsequent to the hearing of Teachscope's motion to dismiss, Teachscope  
12 again offered this mutual exchange as a way to avoid further litigation, which Plaintiffs  
13 refused.

## 14     **III.    MOTIONS**

15           Presently pending is Teachscope's Motion To Dismiss And/Or Strike The  
16 Complaint, which is fully briefed and for which a hearing took place on September 26,  
17 2007. Teachscope's motion is currently under submission before the Court. Also pending  
18 are Plaintiffs' Motion for Entry of Protective Order and their Motion to Compel Initial  
19 Disclosures. By the Court's order of December 12, 2007, Teachscope will serve  
20 oppositions to these motions, if any, on December 12, Plaintiffs will reply on December 19,  
21 and the motions will be heard on January 9, 2008.

22           Plaintiffs anticipate further dispositive motions and have included a deadline for such  
23 motions in their proposed schedule in Part VIII.1, *infra*.

24           Teachscope believes establishing any deadlines for such motions is premature and  
25 unwarranted in light of its pending motion to dismiss.

## 26     **IV.    AMENDMENT OF PLEADINGS**

27           Plaintiffs do not believe the motion to dismiss is well taken, however they may  
28 amend the Complaint in the event that any claims are dismissed. Plaintiffs also reserve the



1 right to later amend to add claims or join parties. Because it has filed a motion to dismiss,  
2 Teachscope has not filed an initial Answer at this time. Plaintiffs propose a deadline to  
3 amend the pleadings as part of its proposed schedule in Part VIII.1, *infra*.

4 Teachscope believes establishing any deadlines for amending pleadings is premature  
5 and unwarranted in light of its pending motion to dismiss.

6 **V. EVIDENCE PRESERVATION**

7 Both parties assert that they have taken steps to preserve physical and electronic  
8 evidence relevant to the issues reasonably evident in this action. These steps include the  
9 distribution of an evidence preservation memorandum/communication to those individuals  
10 employed by the parties who are likely to possess such physical and electronic evidence,  
11 and the cessation of routine e-mail, electronic document, and archived physical document  
12 destruction programs.

13 **VI. INITIAL DISCLOSURES**

14 There is a dispute between the parties as to their initial disclosure obligations, and  
15 the parties' positions are set forth below:

16 **1. Plaintiffs' position**

17 Plaintiffs served their Rule 26(a) initial disclosures on September 26, 2007, pursuant  
18 to the deadline for the same in the Initial Case Management Order. Because Teachscope did  
19 not serve its initial disclosures on the same day, Plaintiffs have moved to compel them. The  
20 hearing for the motion to compel is January 9, 2008 at 9:30 a.m.

21 **2. Teachscope's position**

22 Teachscope informed Plaintiffs of its objection to their assertion that Teachscope was  
23 required to make its initial disclosures on September 26th (which was prior to the parties'  
24 Rule 26 conference), in light of its motion to dismiss under submission with the Court, and  
25 as a result of the Court's continuance of the Court's Case Management Conference.  
26 Teachscope believes its initial disclosures are not overdue and believes the matter as to the  
27 timing of Teachscope's disclosure should be addressed, if at all, at the Case Management  
28 Conference. Nonetheless, Teachscope intends to serve its initial disclosures on December



1 12, 2007, absent an order by this Court, because this is the date set by this Court for the  
2 filing of this joint statement.

3 **VII. PROPOSED DISCOVERY PLAN**

4 **A. Discovery Schedule**

5 Plaintiffs propose phased discovery and further exchanges of disclosures, privilege  
6 logs, etc. as set forth in its proposed schedule in Part VIII.1, *infra*.

7 The parties have not been able to agree on a discovery schedule, due to Teachscape's  
8 refusal to discuss the substance of any of the dates or deadlines proposed by Plaintiffs.  
9 Plaintiffs believe Teachscape's position is improper because there is no order staying  
10 discovery in this case and the Federal Rules and Court's orders require the parties to meet  
11 and confer on this issue.

12 Teachscape believes waiting to set discovery cut-offs and trial deadlines until after  
13 the Court rules on its motion to dismiss, (at which time this Court may have determined the  
14 case or certain claims should be dismissed, and/or obtaining the Court's guidance on the  
15 parties' differences, in particular the parties' proposals for focused exchange of Marygrove  
16 course materials), was and is a reasonable approach and consistent with Teachscape's  
17 obligations under the Court's rule and Federal Rules.

18 **B. Discovery Limits**

19 **1. Plaintiffs' position**

20 Plaintiffs request that the default discovery limits set forth in Federal Rules of Civil  
21 Procedure 26-37 be modified for this action as follows:

22 (1) The number of depositions per side should be increased from 10 to 20 because  
23 (a) there are twelve former employees of Canter, some of whom are located outside of this  
24 district, that subsequently have worked for Teachscape and who may provide testimony  
25 relevant to the claims asserted, (b) there are additional party witnesses that Plaintiffs may  
26 wish to depose, (c) there are third-party witnesses at Marygrove and other university  
27 partners of Canter, who are located outside of this district, that have been approached by  
28 Teachscape, for whom depositions are needed to present their testimony at trial, and

1 (d) there are numerous claims and facts relevant to the asserted claims for which the  
2 above-noted potential witnesses may have non-duplicative testimony.

3 (2) The number of interrogatories that each side may propound should be  
4 changed from 25 per party to 40 per side because of the number of asserted claims and the  
5 numerous facts relevant to those claims.

6 Plaintiffs have propounded requests for production and noticed the deposition of  
7 Teachscope pursuant to Rule 30(b)(6), seeking discovery relating to their claims as set forth  
8 the complaint. With respect to their copyright claim, Plaintiffs' discovery requests are in  
9 accord with their proposal seeking first drafts and final versions of certain course materials  
10 as discussed in Part II.E.1, *supra*.

## 11 2. Teachscope's position

12 As noted in Part II.E.2, *supra*, Plaintiffs have rejected Teachscope's proposal for an  
13 "apples to apples" comparison of the allegedly infringing Marygrove course materials. In  
14 addition, Teachscope believes that modification of discovery limits is inappropriate and in  
15 all events, premature in light of its pending motion to dismiss. Teachscope also notes that  
16 Plaintiffs have propounded 80 requests for production and a notice of its deposition  
17 pursuant to Rule 30(b)(6) identifying 18 separate topics (which total over 80 areas of  
18 inquiry when the subdivisions to each topic are considered), which Teachscope has objected  
19 to on a number of grounds.

## 20 C. Electronic Discovery and Document Production

### 21 1. Plaintiffs' position

22 Plaintiffs propose that the parties produce electronic information and documents,  
23 such as e-mail, documents, spreadsheets, and presentation slides, in TIFF format with  
24 certain metadata – i.e., file location, author / sender, recipients (if applicable), creation or  
25 sent date, date last modified (if applicable), first page and last page, attachment cross-  
26 references (if applicable) – and that is text searchable to the extent the original was text  
27 searchable. Plaintiffs further propose that the parties permit inspection of electronic  
28 documents specifically identified by the requesting party, in order to ascertain metadata or

1 other electronic information contained therein that was not accessible as part of the agreed-  
2 upon production format, to the extent that the inspection would not be unduly burdensome  
3 on the party that produced the document. In addition, Plaintiffs further propose that the  
4 parties each have the option of producing physical documents in scanned TIFF format with  
5 appropriate page breaks to differentiate documents, or in paper format. Irrespective of the  
6 production format, physical documents will be produced in an order that replicates how they  
7 were kept in the ordinary course of business, and will include associated file folder  
8 headings, post-it notes, etc.

9 **2. Teachscape's position**

10 Teachscape asserts that substantive discussions on electronic discovery should be  
11 deferred pending a ruling by this Court on its motion to dismiss. Teachscape believes this  
12 position is reasonable and consistent with its obligations under the Federal Rule and Court's  
13 orders.

14 **D. Limitation of Expert Discovery**

15 **1. Plaintiffs' position**

16 Plaintiffs propose that the production of draft expert reports and communications by  
17 experts with counsel for the parties is exempt from discovery.

18 **2. Teachscape's position**

19 Teachscape believes that discussion of expert discovery limitations is premature and  
20 inappropriate at this time.

21 **E. Privilege Log**

22 **1. Plaintiffs' position**

23 Plaintiffs propose that entries for privilege logs produced shall contain a unique ID  
24 number, a production (Bates) number for redacted docs, a date (by which all log entries will  
25 be sorted), document type, Doc Type, identification of the sender, identification of the  
26 recipient and those copied (if any), a description of the subject such that the opposing party  
27 may ascertain the basis of the privilege asserted, and the type of privilege asserted. In  
28 addition, the parties agree that privileged documents or other privileged information created

1 after the commencement of this action are exempt from being logged.

2 **2. Teachscape's position**

3 Teachscape believes that decisions regarding privilege logs are inappropriate and  
4 premature in light of its pending motion to dismiss.

5 **VIII. PROPOSED SCHEDULING**

6 **1. Plaintiffs' position**

7 The parties have not been able to agree on a case management schedule, due to  
8 Teachscape's refusal to discuss the substance of any of the dates or deadlines proposed by  
9 Plaintiffs. Plaintiffs believe Teachscape's position is improper because there is no order  
10 staying discovery in this case and the Federal Rules and Court's orders require the parties to  
11 meet and confer on this issue.

12 Plaintiffs propose the following comprehensive schedule, which requests deadlines  
13 and dates for events in relation to the trial date set by the Court and sets forth approximate  
14 dates for deadlines and events based on a suggested trial date of November 2008.

15	Deadline to amend pleadings / add parties:	7 months before trial / March 2008
16	Fact discovery deadlines:	
17	• Initial disclosures	September 26, 2007
18	• Deadline for first exchange of privilege logs	8 months before trial / February 2008
19	• Deadline for production of documents and service of amended privilege logs:	6 months before trial / April 2008
20	• Fact discovery cutoff	5 months before trial / May 2008
21	Expert discovery deadlines:	
22	• Expert discovery commences and parties identify experts on issues for which party has burden of proof	5 months before trial / June 2008
23	• Opening expert reports	5 months before trial / June 2008
24	• Rebuttal expert reports	4 months before trial / July 2008
25	• Expert discovery cutoff	3 months before trial / August 2008
26	Dispositive motion practice deadline	2 months before trial / September 2008
27	Pretrial Conference and Trial	November 2008

1                   **2.     Teachscape's position**

2           Teachscape continues to believe that it is inappropriate and impractical to agree upon  
3 trial scheduling when the Court has its motion to dismiss under submission and without  
4 further guidance from the Court.

5 **IX.    TRIAL**

6           Plaintiffs have requested a trial by jury, and estimate that trial will be one to two  
7 weeks in length depending upon the Court's preferences for the length of trial days and the  
8 number of trial days per week. Teachscape believes that setting or estimating the length of  
9 trial is impractical at this time in light of its pending motion to dismiss.

10 **X.     SETTLEMENT AND ADR**

11           Pursuant to ADR Local Rule 3-5, the parties have agreed to court-sponsored  
12 mediation.

13           Plaintiffs assert that settlement will not be possible until meaningful discovery has  
14 taken place, including production by Teachscape of first drafts and final versions of its  
15 course materials, as discussed in Part II.E.1, *supra*. Thus, Plaintiffs request that  
16 court-sponsored mediation take place after Teachscape has produced such materials, or in  
17 the alternative, that the Court order a settlement conference in place of mediation at that  
18 time.

19           Teachscape disagrees with Plaintiffs' above assertions regarding the need for  
20 Plaintiffs' to review "first drafts" of Teachscape's course materials. While Teachscape  
21 believes that this case should be dismissed, it is not opposed to mediation if and when  
22 Plaintiffs are willing in good faith to engage in a meaningful settlement discussion.

23 **XI.    CONSENT TO MAGISTRATE JUDGE**

24           The parties have consented to Magistrate Judge Seeborg to conduct all further  
25 proceedings, including trial and entry of judgment.

26 **XII.   DISCLOSURE OF NON-PARTY INTERESTED ENTITIES OR PERSONS**

27           Plaintiffs have included their "Certificate of Interested Entities or Persons" at the end  
28 of their Complaint. In light of recent stock transactions, however, Plaintiffs restate their

1 certification as follows: Canter is a wholly owned subsidiary of Laureate. Laureate is now  
2 a privately held company, and thus is no longer a publicly traded company.

3 Teachscape has filed its Certificate of Interested Entities or Persons. Teachscape is a  
4 privately held company. Sprout Group, Quad Partners, and WS Investments, each have an  
5 interest of 10% or greater in Teachscape.

6 Respectfully submitted,

7 Dated: December 12, 2007

HELLER EHRMAN LLP

8 By /s/ DANIEL N. KASSABIAN

9 Attorneys for Plaintiffs

10 CANTER AND ASSOCIATES, LLC and  
11 LAUREATE EDUCATION, INC.

12 Dated: December 12, 2007

SONNENSCHN NATH & ROSENTHAL LLP

13 By /s/ GAYLE M. ATHANACIO

14 Attorneys for Defendant

15 TEACHSCAPE, INC.  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Heller  
Ehrman LLP